MULTIMEDIA UNIVERSITY

STUDENT ID NO

MULTIMEDIA UNIVERSITY

FINAL EXAMINATION

TRIMESTER 2, 2021/2022

ULV4622 - LAW OF EVIDENCE II

(All Sections / Groups)

23 APRIL 2022

Reading Time: 9.00am - 9.15am (15 Minutes)

Answering Time: 9.15am – 12.15pm (3 Hours)

INSTRUCTIONS TO STUDENT:

1. Students will have **fifteen minutes** during which they may read the paper and make rough notes ONLY in their question paper. Students then have the remaining **THREE HOURS** in which to answer the questions.

2. This Question paper consists of 4 pages and is divided in to 2 parts **(Part A and Part B)**. There are 2 questions in Part A and 3 questions in Part B.

3. Students are required to answer only **1 question in Part A** (**answer either Q1A or Q1B) and answer ALL 3 questions in Part B.** All questions carry equal marks and the distribution of the marks for each question is given.

4. Students are allowed to bring into the Examination Hall only a CLEAN and ORIGINAL copy of the:
   i. EVIDENCE ACT 1950
   ii. EVIDENCE OF CHILD WITNESS ACT 2007
   iii. CRIMINAL PROCEDURE CODE

   (Students are not allowed to lend or borrow statute(s) during the Examination. "Clean" is defined to include no tagging, no annotation either by the publisher or anyone else, and no erased marking. Highlighting and underlining are also prohibited.)

5. Please write all your answers in the Answer Booklet provided.

PART A: ANSWER EITHER QUESTION 1A OR QUESTION 1B

QUESTION 1A

"[W]e did not agree with the proposition, as advanced in Husdi, that police statements are absolutely privileged. In the upshot, Husdi should no longer be followed in this respect. However, Husdi may have been correct in its eventual outcome on the basis, as alluded to by Syed Othman FJ, that as a matter of public policy, it was undesirable for the prosecution to supply the defence with police statements as there is a real danger of tampering with the witnesses. There are perhaps other reasons as well but since the issue of supplying witness statements before trial is not the issue before us, we need to say no more on the subject. We must also hasten to add, lest it be misunderstood, that the issue of tampering can only arise if such statements are provided prior to the commencement of the trial which was the case in Husdi. In the instant case, however, the contention of tampering is without merit as the prosecution has closed its case and the witnesses of whom the statements are sought are now offered to the defence. Once witnesses are offered by the prosecution, they become defence witnesses. It is hard to imagine tampering with your own witness."

(Per Harmindar Singh Dhaliwal JCA in *Siti Aisyah v PP* [2019] 7 CLJ 27)

Applying relevant statutory provisions and decided cases, assess the correctness of the above statement.

(Total: 25 marks)

OR

QUESTION 1B

"Where the evidence of a witness does not require to be corroborated in law there is no obligation to tender corroborative evidence to support his testimony."

(Per Augustine Paul JCA in *Balachandran v Public Prosecutor* [2005] 2 MLJ 301)

Based on the above statement, assess the circumstances where corroborative evidence is needed as a matter of law and practice. Your answer must be supported with relevant statutory provisions and case law.

(Total: 25 Marks)

Continued…

PART B: ANSWER ALL QUESTIONS

QUESTION 2

On 18 November 2021, Jaya purchased a second-hand car from Syarikat Guarantee Murah Sdn Bhd (Syarikat Guarantee Murah) for the amount of RM40,000.00. The purchase agreement was signed by Jaya as the purchaser, whereas, Ramly who is the manager of Syarikat Gurantee Murah signed the agreement on behalf of the vendor. Before executing the agreement, Ramly has explained to Jaya about the Warranty Policy which covers up until 6 months after the purchase. Jaya then asked "Will this warranty also cover the faulty parts as a result of flood or a natural disaster?" Ramly quickly replied "Yes, that will be covered too!". However, this term was not stated in the purchase agreement.

On 18 December 2021, some areas in Selangor like Klang and Shah Alam were hit with unprecedented flood disaster. Jaya, who is a resident of Klang was also affected with the flood including his newly bought car which is now unable to start as it was submerged in water for a few days. Last week, Jaya contacted Syarikat Guarantee Murah to get his car repaired and claimed for the Warranty as promised by Ramly. Nevertheless, a representative of Syarikat Guarantee Murah explained that the Warranty Policy does not include any damage in the event of a flood or natural disasters. Unsatisfied and feel cheated, Jaya now plans to take a legal action against Syarikat Guarantee Murah and intends to adduce the following evidence:

(i) A copy of the purchase agreement to prove that he bought the car from Syarikat Guarantee Murah. The original copy kept in his house was lost during the flood event on 18 December 2021;

(ii) The oral promise about the Warranty Policy given by Ramly.

Advise Jaya.

(Total: 25 Marks)

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QUESTION 3

Solo was charged and convicted for the offence under s 467 of the Penal Code for forging 2 cheques belonging to Leia (PW1) totalling the amount of RM50,000.00. During the trial, the Prosecution called Mr Cheng (PW4) who was a handwriting expert from the Department of Chemistry Malaysia (DCM). In his testimony, PW4 informed the court that he obtained a Bachelor of Psychology (Hons) in 2019. He joined the DCM in January 2020. After he reported for duty, he underwent an internal training course for Questioned Handwriting and Document Examination. This training was supposed to take place via face-to-face lectures and practical sessions under the supervision of a Senior Expert from the DCM. However, due to Covid-19 outbreak, the lectures were changed to online mode as well as for the practical sessions and the exams. He completed the training in June 2021 and Solo's case was his first case assignment. Regarding his analysis, PW4 confirmed that the signatures on the two cheques did not belong to PW1. He also confirmed that signatures on the forged cheques matched Solo's signature. Based on this, he concluded that the cheques were forged by Solo.

During the defence stage, the Defence team called their own handwriting expert, Mr Kong (DW2) from Singapore. He has over 10 years of experience in forensic documentation and has testified in more than 50 civil and criminal cases in the courts in Singapore and Malaysia. Upon comparing the forged cheques and Solo's handwriting, DW2 found that PW4's conclusion is inaccurate. The last stroke of the signatures on the forged cheques was not similar to the samples of Solo's signature. Despite this, the trial judge still preferred the testimony given by PW4 over DW2 but did not provide further explanation on this matter.

Based on the above facts, analyse the potential arguments that could be raised by Solo's counsel during the appeal proceeding with regard to expert evidence adduced during the trial. Your answer must be supported with relevant case law.

(Total: 25 Marks)

Continued…

QUESTION 4

The accused, Lucky was charged under s 39B(1)(a) Dangerous Drugs Act 1952 (DDA52) for trafficking 2856.0 gram of methamphetamine. He pleaded not guilty and claimed trial. The prosecution's narrative is that on 5 December 2017, around 5.30 pm, the accused had arrived at Kuala Lumpur International Airport ("KLIA") on a flight from Dubai. During a routine examination of his luggage (Exhibit P1) PW1, a customs officer discovered a plastic packet (Exhibit P2) concealed in the lining of the bag. The plastic packet contained a white powdery substance, which was later confirmed to be 2856.0 gram of methamphetamine by the chemist (PW2). The Lucky maintained that he had no knowledge of the drugs concealed in the lining of the luggage. He claimed that the luggage belonged to a friend from Dubai called Omar, and that he had borrowed it.

During trial, the prosecution adduced evidence to show that Lucky had 2 previous convictions for drug related offences, to rebut his defence of innocent carrier. The defence counsel did not object to this evidence, which was admitted by the trial judge. PW1 in his evidence in chief, testified that the accused did not say anything about Omar when the drugs were found. The defence counsel did not cross examine PW1's testimony. At the end of the prosecution's case, the trial judge found that a prima facie case had been established and ordered Lucky to enter his defence.

Lucky elected to give evidence under oath and in his evidence in chief maintained that he had no knowledge of the drugs concealed in the lining of the bag. He claimed that he had informed PW1 about Omar immediately and did not understand why PW1 was lying. He further testified that he was a highly respected businessman and had a family to support. The trial judge later allowed the prosecution to cross examine Lucky on his previous convictions for drug related offences and other charges. At the end of the trial, Lucky was found guilty of the charge. Lucky now wishes to appeal against his conviction.

Analyse Lucky's potential grounds of appeal

(Total: 25 marks)

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